

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GENERAL HOLDING, INC., CON	§
HOLDING, L.P., KOSLOW	§ No. 638, 2006 and
TECHNOLOGIES CORPORATION,	§ No. 16, 2007
and EVAN KOSLOW,	§
	§
Defendants Below-	§
Appellants,	§
	§
v.	§
	§ Court Below—Court of Chancery
KEVIN McGOVERN and JON	§ of the State of Delaware,
KOSLOW, on their own behalf and	§ in and for New Castle County
derivatively on behalf of KX Industries,	§ C.A. 1296-N
L.P., a Delaware Limited Partnership,	§
	§
Plaintiffs Below-	§
Appellees,	§
	§
and	§
	§
KX INDUSTRIES, L.P.,	§
	§
Nominal Defendant Below-	§
Appellee.	§

Submitted: January 16, 2007

Decided: January 19, 2007

ORDER

This 19th day of January 2007, upon consideration of the appellants' motion to consolidate these appeals, or in the alternative to dismiss appeal No. 638, 2006, as well as the appellees' response thereto, it appears to the Court that:

(1) On December 4, 2006, the appellants filed appeal No. 638, 2006 from seven different orders of the Court of Chancery. The brief schedule ordered the opening brief to be filed on January 18, 2007. The notice of appeal did not reflect that appellants' had a motion for attorneys fees that remained pending before the Court of Chancery. The pending motion for attorneys fees clearly rendered appeal No. 638, 2006 interlocutory.¹ It is unclear why the appellants filed the interlocutory appeal without any attempt to comply with Supreme Court Rule 42 or why the appellees did not move to dismiss it.

(2) Nonetheless, on January 10, 2007, the appellants filed an appeal from the Court of Chancery's final order, dated December 11, 2006, ruling on their motion for attorneys fees. The second notice of appeal, in case No. 16, 2007, is identical in substance to the first notice of appeal filed in No. 638, 2006. Rather than voluntarily dismissing their non-compliant interlocutory appeal,² appellants have filed the present motion seeking to consolidate their improperly-filed interlocutory appeal with their appeal from the Court of Chancery's final order. Alternatively, appellants ask the Court to dismiss appeal No. 638, 2006. While the appellees do not appear to

¹ *Lipson v. Lipson*, 799 A.2d 345, 348 (Del. 2001).

² Del. Supr. Ct. R. 29(a) (allowing an appellant to voluntarily dismiss an appeal, without Court approval, anytime prior to the filing of the appellee's answering brief).

object to either consolidating the appeals or dismissing appeal No. 638, 2006, they do object to the appellants' motion "to the extent that it confers additional time for [a]ppellants to file their opening brief."

(3) The Court has no jurisdiction to hear interlocutory appeals that are not filed in compliance with Supreme Court Rule 42. Accordingly, appeal No. 638, 2006 must be dismissed. Under the unusual circumstances of this case, which were caused by the appellants' premature filing of the appeal in No. 638, 2006, we find it appropriate to amend the typical briefing schedule established by Supreme Court Rule 15. Accordingly, the appellants' opening brief in appeal No. 16, 2007 shall be due on or before January 31, 2007. Appellees' answering brief shall be due 30 days thereafter.

NOW, THEREFORE, IT IS ORDERED that appeal No. 638, 2006 is hereby DISMISSED. The opening brief in appeal No. 16, 2007 shall be due on or before January 31, 2007.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice